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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 89

J. H. CHEATHAM, et al.,

Petitioners,

vs.

ILLINOIS CENTRAL GULF RAILROAD COMPANY, et al.,

Respondents.

On Petition For A Writ Of Certiorari
To The United States Court of Appeals
For The Sixth Circuit

BRIEF FOR RESPONDENT ILLINOIS CENTRAL GULF RAILROAD COMPANY IN OPPOSITION

QUESTION PRESENTED

In an action to enforce the provisions of a collective bargaining agreement, which involves a dispute over the meaning or application of such agreement, did the failure of the petitioners to invoke and exhaust contractual or statutory arbitration remedies available to them under

such agreement and the Railway Labor Act deprive the court of jurisdiction over the subject matter of the action?

STATEMENT OF THE CASE

On September 25, 1964, a collective bargaining agreement was entered into between most of the railroads of the United States, including the respondent Railroad, and representatives of employees employed in crafts commonly known as the "shop crafts", one such representative being the respondent Union. (Exhibits to Appendix, Exhibit A.) All petitioners were employed, at all relevant times, in the craft of carman, one of the shop crafts. (App., p. 8a.)

Article I of the agreement is entitled "Employee Protection." The purpose of the Article is set forth in Section 1 thereof. It provides, in pertinent part:

> "The purpose of this rule is to afford protection benefits for employees who are displaced or deprived of employment as a result of changes in the operations of the carrier due to the causes listed in Section 2 hereof."

Section 1 of Article VI of the agreement states, in pertinent part:

> "In accordance with the provisions of the Railway Labor Act, as amended, a Shop Craft Special Board of Adjustment . . . is hereby established for the purpose of adjusting and deciding disputes which may arise under Article I, Employee Protection. . . ."

Section 8 of Article VI, provides:

> "The Board shall have exclusive jurisdiction over disputes between the parties growing out of grievances

concerning the interpretation or application of Article I, Employee Protection. . . ."

And Section 15 of Article VI concludes:

"Decisions of the Board shall be final and binding upon the parties to the dispute."

The gravamen of the amended complaint in this action is that the Railroad's failure to pay petitioners a separation allowance under the terms of the September 25, 1964, agreement was in violation of the terms of that agreement. (App., p. 64a.) None of the petitioners, however, invoked or exhausted the provisions of Article VI of said agreement.

In addition to their failure to invoke the remedy provided in the collective bargaining agreement under which their claim is predicated, the petitioners also failed to resort to the statutory arbitration tribunal provided under the Railway Labor Act to resolve disputes concerning the interpretation or application of collective bargaining agreements. Thus, Section 3, First (i) of the Railway Labor Act (45 U.S.C. sec. 153, First (i)) provides for statutory compulsory arbitration of:

". . . disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions. . . ."

The district court, in granting the respondents' motions for summary judgment, concluded:

". . . As plaintiffs concede, it is from the 1964 agreement that their rights, if any, flow, and it is their failure to invoke and exhaust the grievance machinery of

that agreement, or the provisions of the Railway Labor Act dealing with the handling of such grievances, that is the basis of this Court's action." (Pages 12-13 of the Appendix to petitioners' brief.)

The Court of Appeals, in two separate opinions*, likewise found that inasmuch as the threshhold issue between the parties could be resolved only by an interpretation of the 1964 agreement, the petitioners were required to exhaust their contractual or statutory remedies to decide that issue. The court stated (page 15 of the Appendix to petitioners' brief):

"Upon motions for summary judgment it became clear that both defendants disputed the claim that the 1964 Agreement gives to plaintiffs the right to receive separation allowances. Thus, the first issue presented by the complaint could only have been resolved by an interpretation of the 1964 Agreement. However, the 1964 Agreement requires that disputes arising out of grievances concerning the interpretation or application of provisions for employee protection be settled by binding arbitration. Furthermore, Section 3 of the Railway Labor Act, 45 U.S.C. 153, provides for primary jurisdiction in the National Railroad Adjustment Board over disputes involving 'minor' grievances between railroads and their employees. The present dispute is 'minor' within the meaning of the Act and cases. It has been clearly held that the pertinent provisions of the Act are to be treated as creating a compulsory arbitration requirement. *Andrews* v. *Louisville & Nashville R.R.*, 406 U.S. 320 (1972); *Gunther* v. *San Diego & Arizona Eastern Ry. Co.*, 382 U.S. 257 (1965); *Order of Ry. Conductors* v. *Pitney*, 326 U.S. 561 (1946)."

* One affirming the decision of the district court, the other denying petitioners' motion for rehearing.

In conclusion, the Sixth Circuit stated (page 18 of the Appendix to petitioners' brief):

> "The allegations of the complaint were sufficient to survive a motion to dismiss, but the facts developed on the motion for summary judgment demonstrated that the allegations of union wrongdoing and collusion were unsupported claims which did not remove this dispute from the arbitration provisions of the collective bargaining agreement."

THE WRIT SHOULD NOT BE GRANTED

The decision of the Sixth Circuit sought to be reviewed here is not in conflict with the decision of another court of appeals; it does not decide any important question of federal law which has not been settled by this Court; nor is the decision in any way inconsistent with prior decisions of this Court. The petition, in essence, is an attempt to obtain a second appellate review of the adverse decisions rendered below. We submit that this case is not one that warrants review by this Court and the writ should be denied.

The holding of the courts below that federal courts should not exercise jurisdiction in a railway labor dispute involving the interpretation or application of a collective bargaining agreement is a restatement of a principle of law that has been settled for more than 29 years. Thus, in *Order of Ry. Conductors* v. *Pitney*, 326 U.S. 561 (1946), the Court held that such "minor" disputes are within the exclusive primary jurisdiction of the arbitration provisions of Section 3 of the Railway Labor Act (45 U.S.C. sec. 153) and federal courts should not exercise jurisdiction in this area.

Over the ensuing years, this Court has had numerous occasions to reaffirm and broaden its holding of the ex-

clusiveness of arbitration in resolving disputes over the proper meaning of agreements. In *Gunther* v. *San Diego & Arizona Eastern Ry.*, 382 U.S. 257 (1965), the Court had further occasion to expand on the nature of the arbitration provisions of Section 3 of the Act. The Court stated (at 263-264):

> "This Court time and again has emphasized and reemphasized that Congress intended minor grievances of railroad workers be decided finally by the Railroad Adjustment Board. In *Brotherhood of Railroad Trainmen* v. *Chicago River & Indiana R.R. Co.*, 353 U.S. 30, the Court gave a Board decision the same finality that a decision of arbitrators would have. In *Union Pacific R.R. Co.* v. *Price*, 360 U.S. 601, the Court discussed the legislative history of the act at length and pointed out that it 'was designed for effective and final decision of grievances which arise daily' and that its 'statutory scheme cannot realistically be squared with the contention that Congress did not purpose to foreclose litigation in the courts over grievances submitted to and disposed of by the Board. . . .' 360 U.S., at 616. Also in *Locomotive Engineers* v. *Louisville & Nashville R.R. Co.*, 373 U.S. 33, the Court said that prior decisions of this Court had made it clear that the Adjustment Board provisions were to be considered as 'compulsory arbitration in this limited field,' p. 40, 'the complete and final means for settling minor disputes,' p. 39, and 'a mandatory, exclusive, and comprehensive system for resolving grievance disputes.' p. 38."

Until three years ago, the only exception to the rule of the exclusiveness of the arbitration remedy was in situations in which a railroad employee brought an action in a state court for damages for unlawful discharge and the exhaustion of remedies doctrine of the state in which suit was filed did not require a resort to arbitration before

litigation could be commenced. Even this exception has been eliminated. Thus, in *Andrews* v. *Louisville & Nashville R.R.*, 406 U.S. 320 (1972), the Court stated (at 322):

> ". . . [T]he notion that the grievance and arbitration procedures provided for in minor disputes in the Railway Labor Act are optional to be availed of as the employee or the carrier chooses, was never good history and is no longer good law."

And, at page 324:

> "The fact that petitioner characterizes his claim as one for 'wrongful discharge' does not save it from the Act's mandatory provisions for the processing of grievances. Petitioner argues that his election to sever his connection with the employer and treat the latter's alleged breach of the employment contract as a 'discharge' renders his claim sufficiently different from the normal disputes over the interpretation of a collective-bargaining agreement to warrant carving out an exception to the otherwise mandatory rule for the submission of disputes to the Board. . . . The fact that petitioner intends to hereafter seek employment elsewhere does not make his present claim against his employer any the less a dispute as to the interpretation of a collective bargaining agreement. His claim is therefore subject to the Act's requirement that it be submitted to the Board of Adjustment."

In the present case, not only did petitioners have available the statutory arbitration process of the Railway Labor Act, they likewise had available the arbitration provisions of Article VI of the September 25, 1964, agreement which were designed to deal with the very kind of dispute involved in this case. Indeed, even if there was no provision in the Railway Labor Act providing for compulsory arbitration, the failure of petitioners to invoke

and exhaust the contractual arbitration remedy would be sufficient to deprive a court of jurisdiction to determine the disputes subject to arbitration under the agreement. *Republic Steel Co.* v. *Maddox,* 379 U.S. 650 (1965).

It is clear that the decision of the courts below that the contract-interpretation dispute underlying the action is subject to the exhaustion of administrative or contractual arbitration remedies is wholly consistent with prior precedents of this Court.

Likewise consistent with holdings of this Court, and other courts of appeals, is the holding of the court below that the exhaustion doctrine was not nullified, notwithstanding the Union's belief that petitioners' claims were without merit, inasmuch as petitioners had the right to progress their claims on their own behalf. It is undisputed that petitioners did have the power to invoke the grievance-arbitration procedure without the Union and that the Union did nothing to prevent petitioners from exhausting their contractual or statutory remedies. (App., pp. 14a-15a.)** Thus, in *Vaca* v. *Sipes,* 386 U.S. 171 (1967), the lead case which established the principle that there are certain instances in which employees would not be required to exhaust their contractual remedies, this Court stated (at 185):

> "We think that another situation when the employee may seek judicial enforcement of his contractual rights arises, if, as is true here, the union has the sole power under the contract grievance procedure, and if, as

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**It should be noted that assuming, *arguendo,* that petitioners had proceeded to arbitration and had, in fact, been denied a fair and impartial arbitration, the Railway Labor Act would have provided an adequate remedy. 45 U.S.C. sec. 153 (q).

> alleged here, the employee-plaintiff has been prevented from exhausting his contractual remedies by the union's wrongful refusal to process the grievance."

Similarly, in *O'Mara* v. *Erie Lackawana R.R.*, 407 F. 2d 674 (2d Cir. 1969), *aff'd sub. nom. Czosek* v. *O'Mara*, 397 U.S. 25 (1970), the court stated (407 F. 2d at 677):

> "The union's refusal to process their grievances does not excuse the plaintiffs' failure to exhaust since individual employees have standing to prosecute their own grievances before the Board."

Here again, the decision of the court below in no manner plowed new ground in a field of settled principles.

The only remaining matter, perhaps deserving comment, is petitioners' request that this court grant certiorari apparently to review the lower courts' findings that there was no genuine issue as to any material fact. Inasmuch as the motions of the Railroad and Union were for summary judgment, rather than motions to dismiss, it was, of course, entirely appropriate for the lower courts to examine the entire record in reaching their decisions. The opinions of both courts show that they carefully reviewed all the evidence submitted and concluded that there was no genuine issue of material fact. Thus, the district court stated (app. to petitioners' brief, at 12):

> "In evaluating the substance of plaintiffs' contention of an unlawful conspiracy between defendants, the Court has considered carefully the evidence presented through affidavits submitted by the parties, including the documentary data submitted in support of factual assertions in such affidavits. In all material respects, the facts relied upon separately by the parties have not been sought to be countered by the other."

Similarly, the court of appeals reviewed the facts and concluded (app. to petitioners' brief, at 16):

> "Upon consideration of the entire record, including briefs and oral arguments, we conclude that the District Judge properly determined that the case as developed on motions for summary judgment contained no genuine issue as to any material fact and that the moving part[ies were] entitled to a judgment as a matter of law."

This Court, on several occasions, has stated that certiorari is not granted to review evidence and discuss specific facts. *Berenyi* v. *Immigration Director,* 385 U.S. 630, 635 (1967); *Graver Manufacturing Co.* v. *Linde Co.,* 336 U.S. 271, 275 (1949); *United States* v. *Johnston,* 268 U.S. 220, 227 (1925).

CONCLUSION

For the foregoing reasons, it is respectfully requested that the petition for a writ of certiorari be denied.

Respectfully submitted,

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